

In re) Fair Hearing No. 20,647
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Appeal of)

The petitioner appeals a decision by the Department for Children and Families, Child Development Division, finding that petitioner violated licensing regulations governing Early Childhood Programs. The issue is whether petitioner's case should be dismissed for failure to file a timely appeal.

1. The facts are not in dispute. On September 11, 2006, petitioner's program was visited by a licensing field specialist. On that same day, the licensing field specialist issued to petitioner a Licensing Site Visit Field Form noting two violations of the licensing regulations. Petitioner was notified in writing on page 2 of said Field Form of her rights to appeal the Department's decision; the applicable section stated:

You have the right to appeal, within 30 days, the Department's determination of violations and other regulatory related decisions, such as limits or conditions or the requirement that you complete a corrective action plan. See 3 V.S.A. § 3091.

2. Petitioner did not appeal the Department's decision until November 3, 2006.

3. On January 4, 2007, a telephone status conference was held with the petitioner and Department in which the Department informed the petitioner that a Motion to Dismiss would be filed because the appeal was not timely.¹ Petitioner acknowledged that her appeal had been filed late.²

ORDER

The Department's Motion to Dismiss the petitioner's appeal against the Department as untimely is granted.

REASONS

Rule No. 1 of the Board's Fair Hearing Rules reads as follows:

1. Requests for fair hearings. A hearing may be requested by an applicant or recipient of assistance, benefits or social services, or by a licensee or an applicant for a license, as provided at section 3091 of Title 3.

. . .

Appeals from decisions by the Department of Social Welfare³ and the Office of Child Support shall not

¹ Although the appeal is not timely, the Department agreed to informally look at the case.

² Petitioner acknowledged in a letter dated November 8, 2006 to the parents and guardians of children at her program that she "initially planned to dispute it, however time ran short. . ."

³ Now Department for Children and Families (covering programs under Economic Services, Health Access Eligibility Unit, etc.)

be considered by the board unless the appellant has either mailed a request for fair hearing or clearly indicated that he or she wishes to present his or her case to a higher authority within 90 days from the date when his or her grievance arose. In food stamps cases, a household may also request a fair hearing at any time within a certification period to dispute its current level of benefits. All other appeals must be made within 30 days from the date the grievance arose, unless otherwise provided by statute. (emphasis added)

Petitioner's appeal falls under the provisions for filing an appeal within 30 days from the date the grievance arose.

The Human Services Board lacks subject matter jurisdiction when a petitioner (appellant) does not file a timely appeal. Fair Hearing No. 17,109.

Based on the foregoing, the Department's Motion to Dismiss should be granted. 3 V.S.A. § 3091, Fair Hearing Rule No. 1.

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